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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,978	12/28/2001	Jeffrey B. Hundley	1381-011312	1223

7590 11/05/2003

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EXAMINER	
FITZGERALD, JOHN P	

ART UNIT	PAPER NUMBER
3637	

DATE MAILED: 11/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/034,978	HUNDLEY, JEFFREY B.	
	Examiner	Art Unit	
	John P Fitzgerald	3637	

The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 August 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *32-55* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *32-36,41,44-46, 49-51 and 55* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *37-40,42,43,47,48 and 52-54* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Response to Amendment

1. In view of Applicant's amendment filed 15 August 2003, rejections of claims under 35 U.S.C. § 112, second paragraph are no longer applicable as a result of Applicant's cancellation of claims 15-18 and 22. However, new rejections under 35 U.S.C. § 112, second paragraph are present in the new claims.

Election/Restrictions

2. Newly submitted claims 37-40, 42, 43, 47, 48 and 52-54 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 37-40, 42 and 43 include limitations of a non-elected invention of a "bracket" and independent species thereof (appearing in non-elected Figs. 7-11). Applicant previously elected Group II, species Figs. 1 and 5, drawn to a structural panel. Figs. 1 and 5 clearly indicate a bracket having polygonal body in the shape of a pentagon (five sides), and provide no indication of cylindrical, hillside or D-shaped washers (appearing in non-elected Figs. 6-9), as recited in claims 47, 48 and 52-54, nor a first passageway either biased toward the first side (appearing in Figs. 2 and 3), nor a first passageway comprised of two portions that taper down and intersect approximately midway between the wall thickness (appearing in Fig. 6) as recited in claims 42 and 43, respectively.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution

on the merits. Accordingly, claims 37-40, 42, 43, 47, 48 and 52-54 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

3. Claim 55 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 55 recites the limitation "the convex members" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

4. Claim 32-36, 41, 44-46 and 50 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fujishima et al., Ikuno et al. and Shahnazarian. Fujishima et al. disclose a structural panel (21'') (Fig. 17) having a first track (A); a second track (B); a plurality of elongated members or studs (S) therebetween (as recited in claim 50) connected to and securing the first track and second track, wherein the intersection of the outermost elongated members and the first track and second track define four inner corners (C); two pairs of brackets (31) (Fig. 18) (as recited in claim 44) secured to one of the two diametrically opposed inner corners; wherein each bracket of the at least one pair of brackets is secured by welding to one of either the first or second track and to the adjacent outermost elongated member (Fujishima et al. col. 5, line 36) (as recited in claim 45); a cross member (32) passing through a first passageway (bores) of one of the pair of brackets and secured at a first end to one of the pair of brackets and the cross member passing through the first passageway of the other of the pair of brackets and secured at a second

end to the other of the pair of brackets; wherein each cross member has threaded ends which extend through the first passageways (bores) in the brackets and are secured to the brackets with mating nuts (33) which coact with walls of the bracket surrounding the first passageways, such that the tension in the cross member may be adjusted by tightening or loosening the nuts against the brackets (Fujishima et al. col. 5, lines 34-35) (as recited in claim 46). Fujishima et al. further disclose that the brackets have a polygonal body shape; a first side and second side defining a thickness; a first end adjacent to a second end wherein the first end and the second end form a corner. Fujishima et al. do not expressly disclose a bracket wherein the first end and the second end each have mutually perpendicular outer surfaces; wherein an imaginary first penetration line extends from both the first and second end at the second end and wherein the first penetration line intersects and passes through the cavity wall; wherein a first passageway extends about the first penetration line through the cavity wall; wherein an imaginary second penetration line extends from and in a direction perpendicular to the outer surface of the first end; and wherein a second passage way extends about the second penetration line through the cavity wall of the first end; wherein the cavity wall surrounding the first passageway has a convex shape; and wherein the second passage way of each pair of brackets adapted for receiving a connecting member. Ikuno et al. teach a structural cross-bracing system (Fig. 4) having cross-members (13, 13′) attached to polygonal brackets (Figs. 5-7) having a plurality of sides in the form of a pentagon (as recited in claims35 and 36); the brackets located at opposite corners of the system; the bracket having a first end (J) adjacent to a second end (K) wherein the first end and second end each have mutually perpendicular outer surfaces and each outer surface extends or may be projected to extend to intersect with the other outer surfaces (M); wherein an imaginary first

penetration line (P3) extends from the base corner away from both the first and second end and wherein the first penetration line intersects and passes through the cavity wall (8a); and wherein a first passageway (G) extends about the first penetration line through the cavity wall. Ikuno et al. further teach a further embodiment of the bracket (Fig. 2) having penetration lines (P4, P5) extending from and in a direction perpendicular to the outer surfaces of a first end (N) and a second end (T) and extending through the cavity wall of the first and second ends, respectively, for attaching the bracket through passageways formed about the penetration lines to secure the bracket to the structure and wherein the imaginary first penetration line forms an angle of 45° (between 30-60°) with the outer surface of the first end (as recited in claims 33 and 34). Shahnazarian teaches a bracket having a polygonal body (Figs. 1-7) for mounting in conjunction with structural framework members (12, 14); the bracket having a first passageway (48) opposite a second passage (32) way about a penetration line (P1) (as recited in claim 41); wherein a tie member (34, 334) is received through a cavity and through the first and second passageways; and a securing nut (42, 342) received on the threaded end of the tie member and secured against a cavity wall surrounding the first passageway having a convex shape (Fig. 2A). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the polygonal brackets and all of their attributes, as taught by Ikuno et al. and Shahnazarian, modifying the polygonal brackets disclosed by Fujishima et al., thus providing an earthquake-resistant reinforcement structural panel (Ikuno et al.: col. 1, lines 8-12 and Shahnazarian: col. 1, lines 10-14).

Fujishima et al.

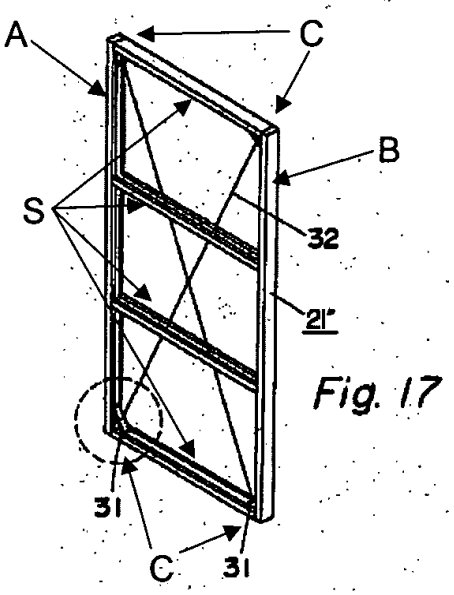
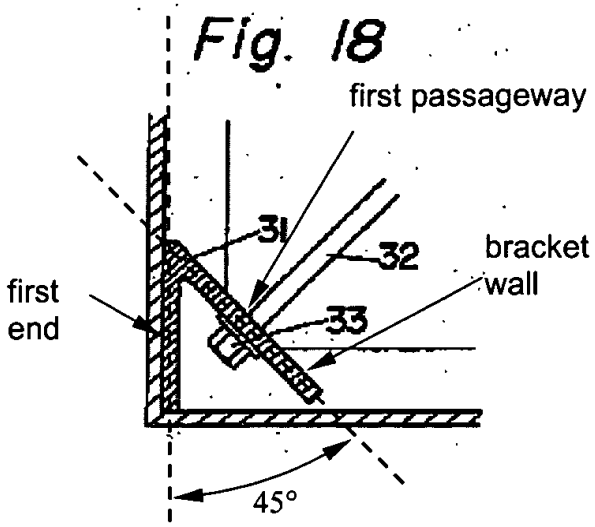


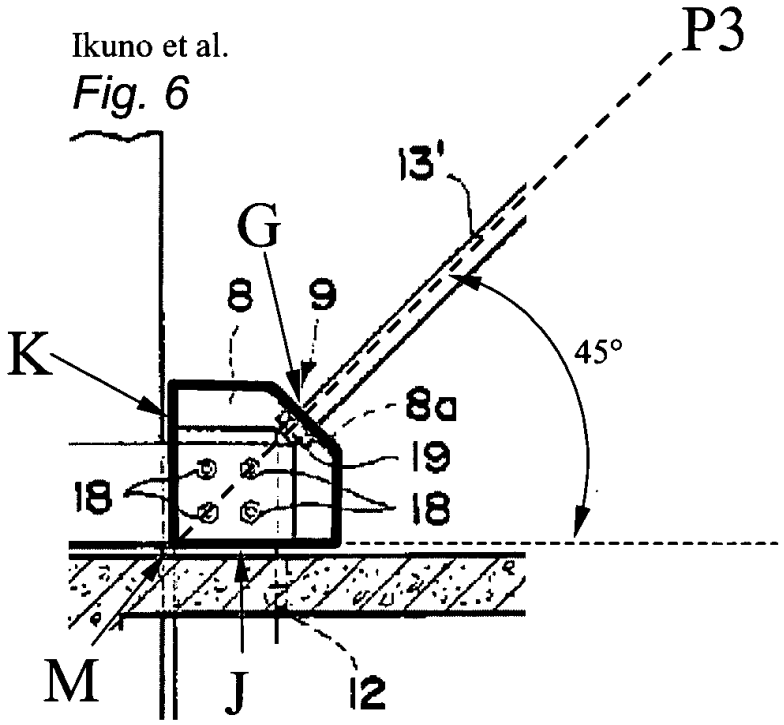
Fig. 17

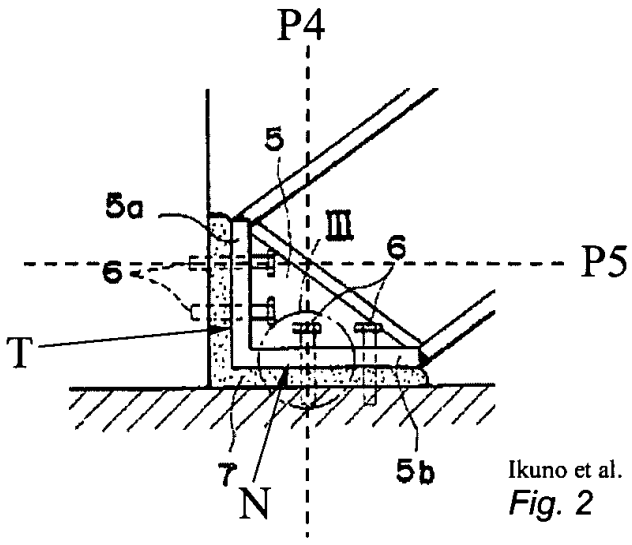
Fig. 18



Ikuno et al.

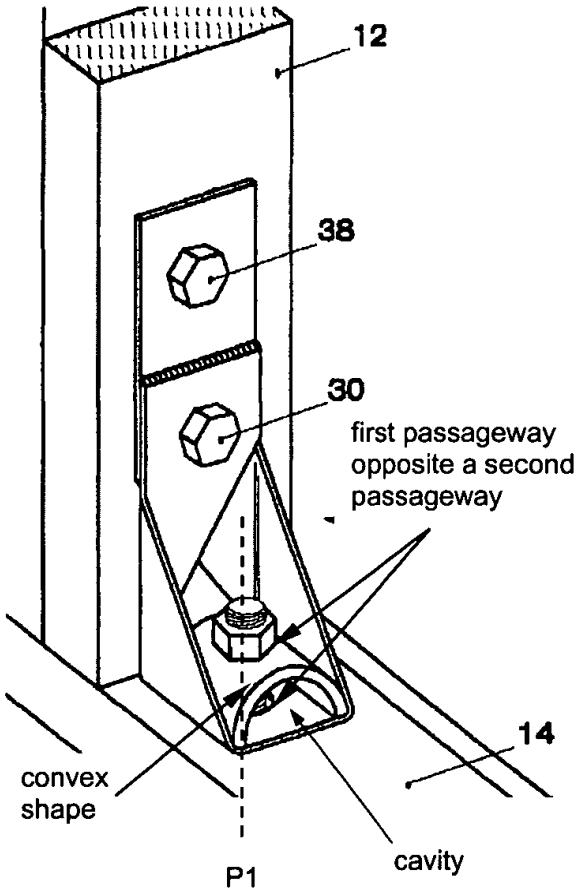
Fig. 6





Ikuno et al.
Fig. 2

Shahnazarian



5. Claim 49 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Fujishima et al., Ikuno et al. and Shahnazarian as applied to claim 32 above, and further in view of Weidlinger. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ elongated first passageways of the brackets, as taught by Weidlinger, modifying the structural panel disclosed by Fujishima et al., Ikuno et al. and Shahnazar thus providing relative motion and adjustability of the cross member in attachment to the bracket (Weidlinger: col. 9, lines 10-17).

6. Claims 51 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujishima et al. and Shahnazarian. Fujishima et al. disclose a structural panel (21'') (Fig. 17) having a first track (A); a second track (B); a plurality of elongated members or studs (S) therebetween connected to and securing the first track to the second track, wherein the intersection of the outermost elongated members and the first track and second track define four corners (C); four brackets (31) (Fig. 18), one bracket secured to a respective corner, the four brackets defining two pairs of diagonally space brackets, each of the brackets defining a cavity; two cross members (32), each cross member having two end portions, the end portion of each of the cross members received in a respective one of the bracket cavity, each cross member secured to a respective bracket of the pair of brackets, wherein each of the cross members end portions coacts with a respective bracket of the pair of brackets on a flat surface. Fujishima et al. do not expressly disclose a bracket wherein the end portions of the cross members coacts with a respective bracket of the pair of brackets through a convex-shaped surface. Shahnazarian teaches a bracket having a cavity for mounting in conjunction with structural framework members (12, 14); the bracket wherein a tie member (34, 334) is received through a cavity and

through the first and second passageways; and a securing nut (42, 342) received on a threaded end portion of the tie member acting through a convex shaped surface. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the polygonal brackets and all of their attributes, as taught by Shahnazarian, modifying the polygonal brackets disclosed by Fujishima et al. by adding a convex-shaped surface, thus providing an earthquake-resistant reinforcement structural panel (Shahnazarian: col. 1, lines 10-14).

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Fitzgerald whose telephone number is (703) 305-4851.

The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai, can be reached on (703) 308-2486. The fax phone number for the organization where this application or proceeding is assigned is (703)-872-9306. Any inquiry of a general nature relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1113.

JF
10/31/2003

LANNA MAI
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